IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos. 12018 to 12020 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANCHHABEN BACHUBHAI

Versus

GOVT. OF INDIA

Appearance:

1. Special Civil Application No. 12018 of 1994

MR MUKESH H RATHOD for Petitioner No. 1

SERVED BY RPAD - (R) for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 20/02/2004

ORAL JUDGEMENT

All these three petitions involve the same questions of fact as well as law, therefore, they are heard together and now they have been disposed of by this common judgment.

The short question which is to be decided in these petitions is whether while exercising power under Section 10[1] of the Industrial Disputes Act, the concerned officer/ Government can go into the disputed question of fact and base its decision on merits of the case.

2. In the instant case, all the petitioners were working as Safaikamdars in class IV category in the State Bank of Saurashtra prior to 21th May 1991 i.e. the date on which their services were terminated by the Bank by oral intimation. It appears that the petitioners were working as daily wage earner and their last daily wage was Rs.15/-. According to them they had rendered continuous service of 240 days in each year and also 240 days during the preceding 12 months from the date of termination. Therefore, the Bank was required to follow the procedure under Section 25F of the Industrial Disputes Act [I D Act] but that was not done. Their demand to reinstate them as Safaikamdar was not accepted by the Bank and, therefore, the dispute was raised which was referred to the Conciliation Officer to explore, whether there was any possibility of settlement. Before the Conciliation Officer during the course of hearing, objection was filed by the Bank to which the petitioners had filed rejoinder. However, a failure report came to be submitted by the Assistant Labour Commissioner. It also appears that an application to the concerned authority was made to refer the dispute to the Labour Court for adjudication. It is required to be noted that in the written objection filed by the Bank, it was stated that as per bi partite settlement entered into between the Bank's Manager Award Staff Union, the petitioners were required to appear in the interview for the purpose of regularization of their services and they were called for such interview and they had failed and, therefore, their services were terminated. In the rejoinder, this statement was specifically denied by the petitioners stating that they were never called for the interview and they had never appeared in such interview, leave apart having not succeeded in it. However, the concerned officer of the Government, upon considering the record produced before it came to the conclusion that no reference was required to be made because in view of the aforesaid settlement they were called for interview for regularization of services but they had failed to qualify. Thus, the concerned officer, while considering whether it was fit case for referring for adjudication relied on the fact that the petitioners had appeared for the test/interview for regularization of services, but had failed. Now considering the controversy that was

involved before the conciliation officer, it is very clear that this is a disputed issue, namely whether the petitioners had at all appeared in the interview. The termination of the services appears to be on the ground that since they had failed to qualify for regularization of their services as the daily wager, their services were no longer required. If that be so, whether it was within the jurisdiction of the concerned officer to reach to such conclusion. It is the matter under controversy before me. In my opinion, such course ought not to have been adopted because that was a disputed question of fact, which could have been resolved only after pleading the case and producing appropriate evidence by the parties before the appropriate foram in a trial.

3. This question has been adequately considering by the Hon'ble Apex Court in the decision rendered in the case of Shambukumar Vs. Govt. of NTC of Delhi and ors, reported in 2002 AIR SC weekly page 1670. In the said decision, it has been held as under:-

> "The order of rejection of reference passed by the State Government merely taking note of the designation of the post held by the appellant i.e. Area Sales Executive is erroneous. determination of question whether employee falls within meaning of " workman" as defined under S.2[s] depends on the types of duties assigned to or discharge by the employee and not merely on the designation of the post held by him. Neither the State Government nor even the high Court has made any attempt to go into the different types of duties discharged by the employee with a view to ascertain whether he came within the meaning of section 2[s] of the Act. the State Government merely considered the designation of the post held by him which is extraneous to the maters relevant for the purpose. from the appointment order in which are enumerated certain duties with the appellant employee may be required to discharge it cannot be held therefrom that he did not come within the first portion of the section 2 [s] of the Act. That determination of the question required examination of factual matters for which materials including oral evidence will have to be considered In

such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the appellant employee was not a workman within the meaning of section 2[s][of the Act, thereby terminating the proceedings primarily Such a matter should be decided by the Industrial tribunal or Labour Court on the basis of the material to be placed before it by the parties. the Government of National Capital Territory of Delhi, herein is directed to refer the dispute raised by the appellant including the question whether the appellant is a workman under the Act, to the Industrial Tribunal/Labour Court for adjudication.

The Division Bench of this Court has considered this aspect in LPA No.1031 of 1996 in SCA Bo.4230 of 1996 decided on 10.11.2003 [Per : R.K.Abichandani, J] and held as under:-

"Section 10[1] of the Industrial Disputes Act, 1947 confers discretion on the appropriate government either to refer the dispute or not to refer it for industrial adjudication on the basis of its opinion as to whether it is expedient to do so or not. IN dealing with an industrial dispute in respect of which a failure report has been submitted under section 12[4], the appropriate government ultimately exercises its powers under section 10[1] of the Act, subject to its obligation under section 12[5] to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been submitted. As held by the Supreme Court in Bombay Union of Journalists Vs. The State of Bombay, reported in AIR 1964 SC 1617, if the dispute in question raises questions of law, the appropriate government should not purport to reach a final decision of such questions of law because that would normally lie within the jurisdiction of Industrial Tribunal. It was further held:

" Similarly, on disputed questions of fact, the appropriate government cannot purports to reach final conclusions for that again would be the province of the Industrial Tribunal"

Thus, though the appropriate government

> is not precluded from considering prima facie existence of the disputes when it decides the question as to whether its power to make reference should be exercised under Section 10 read with Section 12[5] of the Act, it cannot be purport to reach final conclusions in cases where there are disputed questions of fact."

4. There is no doubt in the present case industrial dispute existed. However, when the disputed question with regard to appearance of the petitioners in the interview was required to be decided, it was not permissible for the Government to give its decision one way or the other on that issue. In the present case, the reference has been denied on the ground that the petitioners had appeared in the test/interview for regularization of their services but they had failed to qualify the same. By taking such recourse the Government has deprived the petitioners of their valuable right to have a fair proceeding before the appropriate forum and to prove its case to obtain appropriate relief. Thus, the impugned orders are required to be quashed and set aside. Accordingly, the impugned orders dated 27th October, 1993 are quashed and set aside. The Central Government is directed to reconsider the matter as early as possible but not later than 31st May, 2004 and to take appropriate decision under the provisions of section 10 read with section 12[5] of the Industrial Disputes Act. All these petitions are, therefore, allowed. Rule made absolute accordingly without any order as to costs.

[AKSHAY H.MEHTA, J]

SNS